

## **REMARKS**

### **I. Claims**

Applicants received the Office action dated August 21, 2006. Claims 1-17 and 19 were pending in the above application. By this paper, claims 1-6, 8, 12, 18-19 are cancelled and a new claim 21 is added. Upon entry of this Amendment C, claims 7, 9-11, 13-17 and the new claim 21 will be pending in the application.

The new Claim 21 incorporates the features of existing Claims 1, 4 and 5 and is thus specifically directed to the embodiment of the invention which is illustrated in Figure 4 of the drawings. Deleted Claims 2 and 3 are directed to the embodiment of the invention illustrated in Figure 1 of the drawings and this embodiment is thus effectively eliminated from being an embodiment of the invention to be covered. It is submitted that the various formal objections of the Examiner in respect of Claims 1 to 17 and 19 have been adequately dealt with, particularly by the inclusion of new Claim 21 and the deletion of the various claims as indicated above.

### **II. Double Patenting Rejection**

Reconsideration is requested of the provisional rejection of claims 1-4, 7-9, 11, 13 and 19 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 8, 12-13 and 23 of co-pending patent application 10/494/797, also in the names of Baecker, et al.

Firstly, the co-pending patent application 10/494/797, also in the names of Baecker, et al., has been abandoned. The reason for the abandonment was that the field liner configuration covered by this application did not prove technically successful, particularly in relation to the required positioning of the field liner on a timber pole, the mode of locating the field liner on a timber pole and the long term effective location of the field liner on a timber pole, particularly also during the location of a timber pole in the ground.

Secondly, it is submitted that the double patenting rejection is effectively overcome by the proposed claim amendments and particularly the inclusion of new independent

Claim 21, which includes therein the features of originally filed Claim 5, which is a claim not provisionally rejected on the grounds of non-statutory obviousness-type double patenting.

## **II. Claims Rejection 35 USC § 112**

Reconsideration is requested of the rejection of claims 1-17 and 19 under 35 USC § 112, second paragraph as being indefinite. The indefinite terms appeared in claims 1 and 4 which are now cancelled.

## **III. Claims Rejection 35 USC § 103**

Reconsideration is requested of the rejection of claims 1-14, 16-17 and 19 under 35 USC § 103(a) as being unpatentable over Baecker et al. (US 5,725,921) in view of Steele et al. (US 5,302,428).

### **III.A. Applicants' invention**

The Applicants' invention relates to a field liner that is locatable on a timber pole for protecting the timber pole against subsoil decay. In practice, for the protection of a pole, the field liner must cover either the entire region of the pole that will be located beneath the soil level of the soil in which it is supported, or it must cover the pole at least to a depth beyond which anaerobic conditions exist and where subsoil decay is thus unlikely to occur. The co-applicant herein, Baecker, originated and proved the field liner technology for protecting timber poles against subsoil decay, but in the implementation of the technology, i.e. the application of field liners onto timber poles, various problems had to be overcome, keeping in mind in particular that the application process should be quick and simple in order to permit application onto large numbers of poles, which is ordinarily required. Field liners also should not be excessively exposed

to being damaged during the location of poles in soil bodies and particularly as a result of the backfill of soil into holes within which poles are located.

The field liner that was originally proposed comprises an elongate sleeve formed of a laminate structure including at least two layers, each of a synthetic plastics material and at least one layer having heat shrink properties. The sleeve is dimensioned to fit snugly onto the tapered butt of the pole to be protected and is then securely located through heat shrinking. The difficulties that were encountered included the correct positioning of the sleeve on a timber pole in order to cover the required region of the pole that should be protected and also the actual heat shrink process, which is difficult to achieve in a simple and cost-effective manner. Although it was proposed to seal one end of a sleeve to thereby facilitate the location of a sleeve on a pole, this did not alleviate the problems associated with heat shrinking.

The next generation field liner included a sleeve, loosely locatable on a pole, and a covering sheet secured to and extending from the sleeve, which can be tightly drawn and held around the sleeve, particularly with the aid of straps and buckles. In this case a segment of the field liner could extend beyond the butt end of the pole, which can then be partially drawn closed by a draw string arrangement, thus to operatively cover an operative outer segment of the butt end of the pole when located in the ground, in order to prevent undesired preservative leaching from the pole covered. The two difficulties encountered here included that the location of the liner on the pole again proved difficult, particularly because it had to be ensured that only a desired peripheral segment of the butt end of a pole is covered, while the central region of the butt end remains clear in order to permit water drainage. Also with back filling of a hole in which a pole is positioned, the straps and buckles referred to are exposed to soil filling the hole and, as such, are exposed to being damaged, while the field liner itself also can be displaced thereby. It soon appeared that these problems could not be resolved and this particular field liner was thus discarded, resulting also in the abandonment of US patent application 10/494,797 (see above).

The next generation field liner included the two embodiments of the field liner covered by the present application, the one embodiment field liner being a mere rectangular sheet that can be wound around a pole and secured by means of an adhesive strip, while the second embodiment comprises a sleeve having an effective diameter significantly larger than a pole to be covered thereby, permitting easy location on a pole and subsequent wrapping of excess material around the pole, the sleeve then being securely locatable with the aid of an adhesive strip as described. In relation to both these embodiments the location of the field liner on a pole again presented a problem, for the same reasons as set out above. In respect of the sleeve embodiment the problem was effectively alleviated by at least partially sealing one end of the sleeve, which clearly facilitates the location of the sleeve on a pole, while also providing an arrangement which provides for an outer circumferential segment of the butt of a pole to be covered, while still permitting water drainage, as is hereinabove explained as being an essential requirement of an effective field liner. This latter embodiment of a field liner is the embodiment now covered in new proposed Claim 21, with the first mentioned two embodiments being effectively eliminated by not being covered within the claims.

Particularly in relation to the embodiment field liner as covered in new Claim 21 and as explained above, the location of the field liner on a pole is completely facilitated, a pole merely being inserted into a sleeve until it abuts against the partially sealed end of the sleeve. By wrapping excess material of the sleeve around the tapered pole and securing it by means of an adhesive strip, the secure location of a sleeve on a pole is rendered extremely simple and time efficient, particularly also when compared with the application of the previous field liners as explained above. Also because, through the use of the adhesive strip referred to, the outer surface of the field liner following application is completely smooth, neither damage of the sleeve due to back filling with soil can occur, nor displacement of the field liner on the pole. It is thus submitted that with the use of the field liner as claimed in Claim 21, the problems encountered with previous embodiment field liners in relation to their application onto poles and their

general use were resolved, thus rendering the use of field liners for protecting poles against subsoil decay practical for the first time.

It is submitted also that unlike a field liner heat shrunk onto a pole, the field liner of Claim 21 is still partially removable from a pole in a relatively easy fashion and also relocatable, thus permitting pole inspection from time to time.

The Applicant submits that the field liner as defined in new Claim 21 includes features that are both novel and not obvious and this is referred to also in the comments that follow in respect of the prior art cited by the Examiner.

### **III.B. Comments regarding the prior art**

The Examiner relies essentially on the disclosure of Applicant's US 5,725,921 (Baecker) and the disclosure of US 5,302,428 (Steele) for his rejections, based on obviousness, in relation to the majority of the rejected claims

The Baecker disclosure refers to a field liner comprising a sleeve that is heat shrunk onto a pole. The sleeve must thus fit snugly and slidably onto a pole and is then located by heat shrinking, the location of the sleeve on a pole not being associated in any way with the use of an adhesive. The sleeve is formed by a conventional plastics sleeve manufacturing process and the use of an adhesive for forming the sleeve or for locating the sleeve on a pole is nowhere referred to or alluded to in the relevant disclosure.

The Steele disclosure refers to a substantially rectangular discrete sheet that includes a functional layer segment and a backing layer segment, the sheet, for location on a pipe, requiring it to be wound around the pipe so that the functional layer wraps around the pipe and the backing layer wraps around the functional layer, an adhesive stripe at the free end of the backing layer permitting this end to be adhered to the region of the backing layer overlapped by the end segment of this layer. A sleeve is thereby effectively formed around the pipe, which is then securely located in order to achieve the purpose of the sleeve by heat shrinking.

Insofar as both the prior art devices are thus secured on their substrate by heat shrinking, the mode of location of the sleeve of the invention as above defined can in no way be considered obvious based upon these disclosures. It is nowhere envisaged that a sleeve can be located on a pole by providing it with an effective diameter significantly larger than that of the pole on which it must be located and then to wrap excess sleeve around the pole and securing the sleeve by means of an adhesive strip. There also is no sense in associating the use of an adhesive strip with the heat shrinkable sleeve of the Baecker disclosure, keeping in mind that for its effective use it must slide snugly onto a pole, to permit it's location by heat shrinking, and wrapping of excess sleeve material around the pole is thus not a possibility or a consideration.

**CONCLUSION**

In view of the foregoing, applicant respectfully requests the rejections be withdrawn and request allowance of claims 7, 9-11, 13-17 and 21 now pending in this application.

Applicant requests extension of the time for responding to the office action dated August 21, 2006 for six months to February 21, 2007. The Commissioner is authorized to charge any fees due or underpayment of government fees to Deposit Account No. 19-1345.

Respectfully Submitted,

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